

No. 14-1516 RV

1. On December 28, 2013, Afzali purchased a 2014 Honda motor vehicle for \$25,801.
2. On February 27, 2014, Afzali sold a 2010 Honda motor vehicle for \$18,950.

3. Also on February 27, 2014, Afzali applied for a Missouri title and vehicle registration for the 2014 Honda. She received a credit against the purchase price in the amount of \$18,950 (the selling price of the 2010 Honda). Afzali paid \$289.45 in state sales tax and \$239.79 in local tax on the difference between the purchase price of the 2014 Honda and the selling price of the 2010 Honda (\$25,801 - \$18,950 = \$6,851).

4. On May 24, 2014, Afzali sold a 2007 Honda motor vehicle for \$9,350.

5. On June 26, 2014, Afzali filed a claim for a refund of the state and local sales tax she had paid on the purchase of the 2014 Honda.

6. On July 15, 2014, the Director issued a final decision denying the refund claim.

Conclusions of Law

This Commission has jurisdiction over appeals from the Director's final decisions. Section 621.050.2.¹ Our duty in a tax case is not merely to review the Director's decision, but to find the facts and determine, by the application of existing law to those facts, the taxpayer's lawful tax liability for the period or transaction at issue. *J.C. Nichols Co. v. Director of Revenue*, 796 S.W.2d 16, 20-21 (Mo. banc 1990). Afzali has the burden of proof. Section 621.050.2. Tax credits and exemptions from taxation are construed strictly against the taxpayer, and any doubt or ambiguity is resolved against the taxpayer. *Southwestern Bell Telephone Co. v. Director of Revenue*, 182 S.W.3d 226, 238 (Mo. banc 2005).

Section 144.025.1 states:

Notwithstanding any other provisions of law to the contrary, in any retail sale other than retail sales governed by subsections 4 and 5 of this section, where any article on which sales or use tax has been paid, credited, or otherwise satisfied or which was exempted or excluded from sales or use tax is taken in trade as a credit or part payment on the purchase price of the article being sold, the tax imposed by sections 144.020 and 144.440 shall be computed only

¹ Statutory references, unless otherwise noted, are to the 2000 Revised Statutes of Missouri.

on that portion of the purchase price which exceeds the actual allowance made for the article traded in or exchanged, if there is a bill of sale or other record showing the actual allowance made for the article traded in or exchanged. Where the purchaser of a motor vehicle, trailer, boat or outboard motor receives a rebate from the seller or manufacturer, the tax imposed by sections 144.020 and 144.440 shall be computed only on that portion of the purchase price which exceeds the amount of the rebate, if there is a bill of sale or other record showing the actual rebate given by the seller or manufacturer. Where the trade-in or exchange allowance plus any applicable rebate exceeds the purchase price of the purchased article there shall be no sales or use tax owed. *This section shall also apply to motor vehicles, trailers, boats, and outboard motors sold by the owner or holder of the properly assigned certificate of ownership if the seller purchases or contracts to purchase a subsequent motor vehicle, trailer, boat, or outboard motor within one hundred eighty days before or after the date of the sale of the original article* and a bill of sale showing the paid sale price is presented to the department of revenue at the time of licensing. A copy of the bill of sale shall be left with the licensing office. Where the subsequent motor vehicle, trailer, boat, or outboard motor is titled more than one hundred eighty days after the sale of the original motor vehicle, trailer, boat, or outboard motor, the allowance pursuant to this section shall be made if the person titling such article establishes that the purchase or contract to purchase was finalized prior to the expiration of the one hundred eighty-day period.

(Emphasis added.) Section 144.025.1 sets forth the parameters of the credit that may be taken when a person purchases a new vehicle, sells an old one, and applies for a tax credit against the purchase price of the new vehicle. Thus, the statute must be strictly construed.

In construing the statute, we must look at its plain language to determine the legislature's intent. Words and phrases are to be given their plain and ordinary meaning, which can be derived from the dictionary. *See E&B Granite, Inc. v. Dir. of Revenue*, 331 S.W.3d 314, 318 (Mo. banc 2011). "Original" means "being the first instance or source[.]" MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 875 (11th ed. 2004). "Article" means "an item of goods[.]" *Id.* at 70. The reference to "the original article" indicates there can only be one. Accordingly, a single credit, based on the sale price of a single sold vehicle, may be taken against the purchase price of a single replacement motor vehicle. Afzali received a credit for the

sale of the 2010 Honda against the purchase price of the 2014 Honda. The statute does not authorize any additional credit.

Afzali argues that the Department of Revenue's Form 426, on which a taxpayer may request a refund of taxes or fees paid on motor vehicles, is misleading. She points out that nowhere on the form, and specifically in the "180-Day Credit" box, does it specifically restrict the application of the credit to one vehicle. Prior to the hearing, the Director's counsel sent her copies of previous decisions of this Commission in which we interpreted § 144.025.1 in the same manner as in this decision. Afzali points out that the form was revised in 2014, and could have been revised to eliminate any ambiguity on this point. This Commission has no power to superintend another agency's procedures. *Missouri Health Facilities Review Comm. v. Administrative Hearing Comm'n*, 700 S.W.2d 445, 450 (Mo. banc 1985). We can only convey through this decision Afzali's suggestion that the form be clarified.

Afzali's husband testified at the hearing that he specifically asked the clerk and the licensing bureau when he titled the 2014 Honda whether they would be eligible for an additional credit against its purchase price when they sold the 2007 Honda, and was told they would be. This is unfortunate, but it cannot change the result in this case. Neither this Commission nor the Director has any power to change the law, *Lynn v. Director of Revenue*, 689 S.W.2d 45, 49 (Mo. banc 1985), or to make equitable exceptions to its application. *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940).

Summary

Afzali is not entitled to a refund of sales tax paid on the 2014 Honda.

SO ORDERED on April 8, 2015.

\s\ Karen A. Winn
KAREN A. WINN
Commissioner